

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Tuesday, October 14, 2008 - 12:00 P.M.
Room 319, Heber Wells Building
160 East 300 South
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President USWA Local 392
Dawn Atkin, Esq.
David Bird, Esq.
Reo Castleton, SL County Fire Department
Brandt Goble, Painters and Tapers Local 77
Brian Kelm, Esq.
Edward Holmes, M.D., RMCOEH
James V. Olsen, President, Utah Food Industry Association
Jeff Rowley, Risk Manager, Salt Lake County
Brad Tibbitts, Utah State Insurance Department
Dennis Lloyd for Ray Pickup, Workers Compensation Fund

The following Advisory Council members were excused:

Thomas Bingham, President, Utah Manufacturers Association
Susan Kelly, Liberty Mutual
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Labor Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Robyn Barkdull - Public Information Officer, Labor Commission
Ron Dressler - Policy Director, Labor Commission
Elena Bensor - Workplace Safety Manager, Labor Commission
David Lamb - Administration Director, Labor Commission
Dr. Alan Colledge - Medical Director - Labor Commission
Dr. Robert Rolfs - Utah Department of Health
Erin Johnson - Utah Department of Health
Maggie Karpuk - NCCI
Lorraine Mayne - Milliman, Inc.
Michelle Rigby - Milliman, Inc.
Roger Stuart - Workers Compensation Fund

WELCOME

1. Welcome - Commissioner Hayashi

Commissioner Hayashi brought the meeting to order at 12:00p.m.

2. Announce and welcome new Legislative Liaisons to serve on the WCA Advisory Council – Commissioner Hayashi

Commissioner Hayashi announced that **Senator Karen Mayne and Representative Mike Morley** would be serving as Legislative liaisons for the Council. They would be attending future meetings but both had other commitments and could not attend this meeting.

3. Approval of Minutes – Commissioner Hayashi

Dawn Atkin moved to approve the minutes of the September 10, 2008 meeting. **Jeff Rowley** seconded the motion which passed unanimously.

4. Next regularly scheduled meeting for the Workers Compensation Advisory Council

Commissioner Hayashi reminded members that the next scheduled meeting of the Council would be held on Thursday, November 20th. She asked the Council members to be aware that this was not the regular day council meetings were held and to make note of it.

5. OPEN MEETING BUSINESS: Employers' Reinsurance Fund (ERF) and Uninsured Employers' Fund (UEF) rate adjustments based on 2008 Actuarial Reports.

Commissioner Hayashi turned the time over to **Lorraine Mayne from Milliman, Inc.** to explain the 2008 Actuarial Reports for the rate adjustments of the ERF and the UEF. The **Commissioner** said the Commission's recommendation regarding these funds must be given to the Tax Commission prior to October 15, 2008.

Ms. Mayne pointed out that the handouts were drafts only and that full actuarial reports for each fund, including a description of methods, assumptions, and results would be given to the Commission in the near future. She explained that Milliman's purpose was twofold: projecting the liabilities of each fund at the end of the fiscal year; and recommending an assessment rate to insure that both funds could meet those liabilities.

Ms. Mayne explained that the overall premium base had an increase of 6.0% from 2006 to 2007. The projected premium base for calendar year 2007 was between \$605.2 and 682.2 million and the actual base revenue was \$669.2 million. She said their best estimate of the projection for 2008 was a slight decrease of -0.67% making the base \$664.7 million.

The Employers' Reinsurance Fund (ERF) had revenue of 18.6 % lower than projected due to lower premium tax revenue. Disbursements were 1.5% lower than projected due to continuing decrease in new claimants. Revenue exceeded the disbursements by \$22 million in FY08. Liabilities decreased by \$8.2 million to \$209.3 million. The decrease would have been more significant except for the change in treatment of COLAs to Social Security offsets. With this information, Milliman is recommending that the 7.25% statutory maximum premium rate be reduced to 6.5% for 2009.

The Uninsured Employers' Fund (UEF) had 34% lower revenue than projected primarily due to lower than expected investment returns and lower penalty collections from uninsured employers. The disbursements were 5% lower than projected, which resulted in revenue less disbursements for FY08 being approximately

flat. The current fund balance exceeds the minimum fund statutory requirement and the current projected liabilities. Based upon this information, Milliman is recommending that the Commission maintain the .25% premium rate for 2009.

In response to comments about the reduction in the ERF, **Ms. Mayne** explained that the Commission could take an even more conservative approach and reduce the assessment further than Milliman's recommendation of 6.5%. She said lowering the rate to 4 or 5% would still result in getting the ERF fully funded well before the statutory requirement mandated. Most on the Council spoke in favor of reducing the assessment this year giving employers a break during the economic downturn

MOTION: Jim Olsen moved that the Council recommend to the Commission for the premium rate of the ERF to be lowered to 5% and modify the Administrative Rules to reflect that change as well. **Brian Kelm** seconded the motion which passed unanimously.

The question was asked about the UEF having lower than expected penalty collections from uninsured employers. The **Commissioner** explained that the format for collections has been changed. It is now required that collections go through the State Office of Debt Collection (SODC). The SODC has not been as successful in collections as was using a contract attorney to collect the debts as previously done. The **Commissioner** stated there was legislation currently being drafted to address this issue and allow the Commission to return to the previous method of collections. That legislation will be discussed in the November meeting.

MOTION: Jim Olsen moved that the Council recommend to the Commission for the premium rate for the UEF be maintained at .25%. **Brian Kelm** seconded the motion which passed unanimously.

Mr. Bird asked that at the November meeting of the Council, consideration be given to reducing the assessment of .25% lower for the ERF. Statutory change would be required.

6. Report on the use of Narcotics for Pain Treatment Study by Robert T. Rolfs, M.D., MPH, State Epidemiologist at Utah Department of Health.

Commissioner Hayashi turned the time over to **Dr. Robert Rolfs** to summarize the 2008 Legislative update report on the Prescription Pain Medication Program (PPMP). **Dr. Rolfs** reminded council members that the two-year PPMP was a result of HB137 passed in the 2007 legislative session and funded in part by the Utah Labor Commission. He said the clinical guidelines on prescribing opioids are in their final draft form and will be available for public comment for 30 days prior to publication, which is anticipated in November.

He said the PPMP is currently educating providers through training in small groups, large group presentations, and mass mailings and is on target for the contract completion.

Dr. Rolfs said there is a statewide media campaign which launched in May, "Use Only As Directed" and aired on TV and radio spots throughout Utah. Bookmarks, posters, magnets and pamphlets are among the materials developed and distributed.

Dr. Rolfs also explained that the PPMP was meeting the research initiatives established in the Pain Study and is using the Controlled Substance Data Base in agreement with the Department of Commerce. Initial results of the research are included in the Legislative Report.

Dr. Rolfs then summarized the recommendations of the PPMP explaining the recommendations of opioid treatment for both acute and chronic pain.

Dr. College reminded the WCA Council that pharmaceuticals are a rising cost driver in the workers' compensation arena, especially narcotics. He said having a standard within the health community regarding when to prescribe them would be extremely helpful and was the reason the Labor Commission had contacted the Utah Health Department several years ago to help put together these guidelines.

Dr. Holmes said it was a tremendous amount of work to try to get a handle on this issue and was appreciative of **Dr. Rolfs** and his team. He said he had real concerns about how the PPMP directly relates to helping workers' compensation patients. He wanted to see guidelines developed for injured workers and didn't feel the study thoroughly addressed the issue of chronic narcotic use by injured workers. He was concerned about the costs incurred by narcotics use such as loss of job, lifestyle, family relationships, etc. He said he hoped the final draft of the study would address narcotics use by injured workers more thoroughly.

Dr. Rolfs stated the study was trying to strike a balance for all patients, including injured workers. He said it was critical that patients who need narcotics be able to get them, but also to use them as a last resort.

David Bird expressed concern that the study does not meet the original criteria presented to the funders of the study. He felt it did not fall under the requirements necessary to obtain a grant from the Workplace Safety Fund.

Dr. Stuart of the Workers Compensation Fund said the full report does address the workers' compensation arena. He felt the guidelines were thorough and worked on striking a balance between those who should and should not be prescribed narcotics.

Commissioner Hayashi brought the discussion to an end and said the Commission would honor their legislative agreement of up to \$250 thousand in matching funds again for FY09 to assist in the two-year Prescription Pain Medication Program. She asked that those involved on the committee representing the workers' compensation system make sure we have developed treatment guidelines for injured workers using the workers' compensation system and that information is part of the final report.

7. Report on Psychological Impairment Guidelines Project

Alan Hennebold said in previous discussions on this issue, there were comments regarding the inadequacies of psychiatric ratings. He said the Commission has a call out for examples of specific problems, but had not received any yet.

Dr. Colledge said as the Commission prepares its new comprehensive guidelines, this is an issue being considered. He asked that Brian Kelm and Dawn Atkin provide assistance to the Commission and present any specifics in cases they may have had. He said the guidelines were expected to be complete in March of 2009.

8. Update on Public Safety Officers' WC Presumption for Drug Exposure including funding from Workplace Safety Fund.

Mr. Bunkall referred to the summary he had received from **Dr. Kurt Hegmann, Rocky Mountain Center for Occupational and Environmental Health (RMCOEH)**. **Mr. Bunkall** said the study began in 2007 and was being conducted by the RMCOEH. The purpose of the study was to provide a comprehensive review/research of prior cancer studies involving police officers and firefighters and then to conduct a study here in Utah.

The summary states that following the research/review, there was not a single study done on risks among police officers. There were numerous studies of firefighters and they resulted in different findings among the studies. It was therefore necessary to resort heavily on Utah statistics.

In recent months, the participation rates have increased to 49% of police officer agencies and 93% of the firefighters being allowed to participate in the study. So far the study has enrolled 553 police officers and 549 firefighters and that number is being added upon as it develops.

Currently there are about 10% non-skin cancers cases reported among the police officers and 5% among the firefighters, an overall increase for both groups. They feel this is significant and are currently re-confirming the analyses and finalizing the report.

The deadline for reporting their findings to the legislative committee is November 2008.

Mr. Bunkall brought up the fact that the funding was to come from Workplace Safety Fund, as approved by the WCA Council. He said that because the RMCOEH had not submitted their expenditures prior to the fiscal year ending, June 30, 2008, the funding provided by the Workplace Safety Fund had lapsed back into that Fund. It may now be necessary to ask for an appropriation again from the legislature to provide the funding for the study. He explained this would not be new money, but is lapsed money originally dedicated for the study.

Mr. Bird asked that the Labor Commission refer to the original RFP for the exact wording regarding the amount for the funding of this study and present it at the next meeting of the WCA Council. In the event this study goes over the \$500 thousand originally appropriated.

MOTION: Dawn Atkin moved to advise the Labor Commission to honor the legislative intent for the funding of this study and take the lead in getting the balance of the \$500 thousand originally appropriated by the legislature from the Workplace Safety Fund. Any request for additional money which may go over the \$500 thousand would be separately considered once the exact cost of the study is known. **Jeff Rowley** seconded the motion which passed with **David Bird** voting in the negative.

9. Other Business

Rule R612-2-9.

Ron Dressler, Industrial Accidents Policy Director, explained this Rule moves the authorization for pre-litigation medical examination from the Adjudication Division to the Industrial Accidents Director. He said this Rule was addressed at the last Open Meeting and was just awaiting placement.

MOTION: Jeff Rowley moved to remove R612-2-9 from the Adjudication Division and put it under the Industrial Accidents Director. **Dawn Atkin** seconded the motion which passed unanimously.

Legislation.

Mr. Bunkall explained that because there is so much legislation to discuss at the November meeting of the Council, it would be helpful for a few groups to meet prior to November and discuss each item to make the overall presentation less cumbersome.

In considering schedules, it was agreed that **Jeff Rowley, Dennis Lloyd, Richard Burke, Brian Kelm** and if possible, another employer representative, would meet with **Larry Bunkall** beginning next week to discuss Labor Commission legislation.

Mr. Bunkall announced that the Workers' Compensation Proof of Coverage System is now available on the website. Verification of WC insurance can be obtained by typing in an injury date or an employer's name.

Commissioner Hayashi announced that the Spanish DVD, "*Por el Bien de los Suyos* – For the Sake of Your Loved Ones", was available at no charge to Council members. She explained this DVD was produced with a grant from the Workplace Safety Fund.

Commissioner Hayashi adjourned the meeting at 2:10 p.m.